 12471

DLC 74-2264

FOR IMMEDIATE RELEASE October 17, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.R. 12471, a bill to amend the public access to documents provisions of the Administrative Procedures Act. In August, I transmitted a letter to the conferees expressing my support for the direction of this legislation and presenting my concern with some of its provisions. Although I am gratified by the Congressional response in amending several of these provisions, significant problems have not been resolved.

First, I remain concerned that our military or intelligence secrets and diplomatic relations could be adversely affected by this bill. This provision remains unaltered following my earlier letter.

I am prepared to accept those aspects of the provision which would enable courts to inspect classified documents and review the justification for their classification. However, the courts should not be forced to make what amounts to the initial classification decision in sensitive and complex areas where they have no particular expertise. As the legislation now stands, a determination by the Secretary of Defense that disclosure of a document would endanger our national security would, even though reasonable, have to be overturned by a district judge who thought the plaintiff's position just as reasonable. Such a provision would violate constitutional principles, and give less weight before the courts to an executive determination involving the protection of our most vital national defense interests than is accorded determinations involving routine regulatory matters.

I propose, therefore, that where classified documents are requested the courts could review the classification, but would have to uphold the classification if there is a reasonable basis to support it. In determining the reasonableness of the classification, the courts would consider all attendant evidence prior to resorting to an in camera examination of the document.

Second, I believe that confidentiality would not be maintained if many millions of pages of FBI and other investigatory law enforcement files would be subject to compulsory disclosure at the behest of any person unless the Government could prove to a court -- separately for each paragraph of each document -- that disclosure would cause a type of harm specified in the amendment. Our law enforcement agencies do not have, and could not obtain, the large number of trained and knowledgeable personnel that would be needed to make such a line-by-line examination of information requests that sometimes involve hundreds of thousands of documents, within the time constraints added to current law by this bill.

more

(OVER)

Therefore, I propose that more flexible criteria govern the responses to requests for particularly lengthy investigatory records to mitigate the burden which these amendments would otherwise impose, in order not to dilute the primary responsibilities of these law enforcement activities.

Finally, the ten days afforded an agency to determine whether to furnish a requested document and the twenty days afforded for determinations on appeal are, despite the provision concerning unusual circumstances, simply unrealistic in some cases. It is essential that additional latitude be provided.

I shall submit shortly language which would dispel my concerns regarding the manner of judicial review of classified material and for mitigating the administrative burden placed on the agencies, especially our law enforcement agencies, by the bill as presently enrolled. It is only my conviction that the bill as enrolled is unconstitutional and unworkable that would cause me to return the bill without my approval. I sincerely hope that this legislation, which has come so far toward realizing its laudable goals, will be reenacted with the changes I propose and returned to me for signature during this session of Congress.

GERALD R. FORD

THE WHITE HOUSE,

October 17, 1974.

# # # #

 HR 12471

AIDE-MEMOIRE

H.R. 12471--Freedom of Information Act Amendments

1. The Director of Central Intelligence, by the National Security Act of 1947, is charged with responsibility to protect intelligence sources and methods from unauthorized disclosure (50 U.S.C. 403).

2. There is no specific legislation implementing this authority to strengthen the Director's ability to carry out his responsibilities under law.

3. If the veto of H.R. 12471 is not sustained, the result will be that sensitive intelligence sources and methods critically affecting the national security will be subject to detailed examination in our court system as a result of a suit to publish such information which can be brought by any person regardless of citizenship.

4. The President has already stated his concern that the legislation could adversely affect our military or intelligence secrets, and that diplomatic relations also could be adversely affected. The President has pointed out that the court should be forced to make what amounts to the initial classification decision in sensitive and complex areas where they have no particular expertise. The result would be that a determination by the Director of Central Intelligence that a disclosure of a document would endanger intelligence sources and methods could be overturned by a district judge who thought that the plaintiff's position was reasonable. This would give less weight before the courts to an Executive determination involving the protection of our most vital secrets and interests than is accorded determinations involving routine regulatory matters under standard administration law concepts.

5. The President's counterproposal for legislation would permit the courts to review classification under the Freedom of Information Act, but to uphold the classification if there is a reasonable basis to support it. Under the President's proposal the courts could consider all attendant evidence in camera and an in camera examination of the documents.